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NETFLIX, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

BROADCOM CORPORATION, et al., Plaintiffs, v. NETFLIX, INC., Defendant.	Case No. 3:20-cv-04677-JD **DEFENDANT NETFLIX, INC.'S NOTICE AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION TO DISMISS** Date: June 23, 2022 Time: 10:00 a.m. Dept.: Courtroom 11, 19th Floor Judge: Honorable James Donato Date Filed: March 13, 2020 Trial Date: None Set

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on June 23, 2022 at 10:00 a.m. in Courtroom 11, 19th Floor, 450 Golden Gate Avenue, San Francisco, California, before the Honorable James Donato, Defendant Netflix, Inc. ("Netflix") will and hereby does move, pursuant to Rule 12(b)(6) of the Rules of Civil Procedure, for an order dismissing the Twelfth Claim of Plaintiffs Broadcom and Avago Technologies International Pte. Limited's ("Broadcom's") Third Amended Complaint with prejudice. This motion is based upon this Notice; the following Memorandum of Points and Authorities; the complete files and records in this action; the argument of counsel; and such other matters as the Court may consider.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A patent's eligibility under 35 U.S.C. § 101 must be supported by something other than the patent owner's say so. But that support is missing from Broadcom's Third Amended Complaint, which reflects its third attempt to salvage the asserted claims of U.S. Patent No. 8,365,183 (the "'183 patent"). On April 13, 2022, the Court found those claims unpatentable under Section 101 and dismissed Broadcom's Twelfth Claim without prejudice. *See* Dkt. 205 (hereinafter, "Order"). In doing so, the Court cautioned that "[i]n light of the plain language of the claims in the patent, the Court has some doubt that Broadcom can amend around this problem." Order at 9. That doubt was well-founded. Broadcom's Third Amended Complaint re-asserts the previously-dismissed '183 patent and includes new allegations apparently designed to overcome another Section 101 dismissal. But the new allegations fail to transform the claimed invention into patent-eligible subject matter. Nor do they give rise to a factual dispute that makes resolution on the pleadings inappropriate.

In fact, Broadcom's new allegations do nothing to respond to the Court's prior analysis. Broadcom's new allegations purport to rebrand the'183 patent's invention as the "Funnel Approach"—a "specific technique" for allocating jobs to computers in a system—and adopt a new claim construction. But these are virtually the same arguments Broadcom made against

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